

## 37 Am. Jur. 2d Fraud and Deceit § 171

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### Fraud and Deceit

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### IV. False Representations

#### G. Representations and Statements as to Particular Matters

##### 3. Value, Cost, and Income of Property

###### a. Value

## § 171. Exceptions to general rule

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Fraud](#)  [27](#), [28](#)

### A.L.R. Library

[Real-estate broker's or agent's misrepresentation to, or failure to inform, vendor regarding value of vendor's real property, 33 A.L.R.4th 944](#)

### Forms

[Am. Jur. Pleading and Practice Forms, Fraud and Deceit § 30](#) (Complaint, petition, or declaration—Rendition of services fraudulently induced—Misrepresentation as to value of stock agreed to be taken in payment of services)

[Am. Jur. Pleading and Practice Forms, Fraud and Deceit § 114](#) (Complaint, petition, or declaration—Misrepresentations as to value of patent)

[Am. Jur. Pleading and Practice Forms, Fraud and Deceit § 186](#) (Complaint, petition, or declaration—For rescission—Collusion between vendee and vendor's agent to defraud vendor—Misrepresentation of true value of land)

There are many exceptions to the general rule that statements of value are not a sufficient basis for a charge of fraud, such exceptions arising out of the special circumstances under which the representations are made.<sup>1</sup> It cannot be laid down as a matter of law that value is never a material fact.<sup>2</sup> For example, the general rule that such statements are not actionable applies only where the parties stand on an equal footing and have equal means of knowledge, with no relation of trust or confidence existing between them.<sup>3</sup> Likewise, a statement of value may be of such a character, so made and intended, and so received, as to constitute fundamental misrepresentation,<sup>4</sup> and if it is made as an assertion of fact, and with the purpose that it shall be so received, and it is so received, it may amount to a fraud.<sup>5</sup> Moreover, a statement of value involving and coupled with a statement of a material fact is fraud.<sup>6</sup>

The general rule that assertions of value are not actionable does not apply where the representation comes from a third person not known to have any interest in magnifying the value of the property. Thus, where the value of certain property is stated by one who apparently has no object to gain, and no motive or intention to depart from the truth, and who thus throws the representee off guard, and exposes the representee to being misled, the speaker is liable in damages for the false statement.<sup>7</sup>

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#### Footnotes

- 1 [Kabatchnick v. Hanover-Elm Bldg. Corp.](#), 328 Mass. 341, 103 N.E.2d 692, 30 A.L.R.2d 918 (1952); [Shepherd v. Woodson](#), 328 S.W.2d 1 (Mo. 1959).
- 2 [Vah Dah Dunshee v. Boadway](#), 119 Cal. App. 678, 7 P.2d 325 (3d Dist. 1932); [Gould v. James](#), 43 Wyo. 161, 299 P. 275 (1931).  
A complaint by first-time home buyers, stating that an appraisal for property one home buyer had purchased contained "several misrepresentations concerning the condition and qualities of the home, including, but not limited to: who owned the property, whether the property had municipal water, the type of basement and the status of repairs on the home," stated a cause of action for fraud against the appraisers as to such home buyer, since the buyer had sufficiently pleaded the elements of material misrepresentation of fact, scienter, justifiable reliance, and damages. [Flandera v. AFA America, Inc.](#), 78 A.D.3d 1639, 913 N.Y.S.2d 441 (4th Dep't 2010).
- 3 [Hiltbold v. Stern](#), 82 A.2d 123, 26 A.L.R.2d 852 (Mun. Ct. App. D.C. 1951); [Shepherd v. Woodson](#), 328 S.W.2d 1 (Mo. 1959).  
The trial court's conclusion that a developer constructively defrauded subdivision lot purchasers when its builders represented that future homes in the subdivision would be of a size and value comparable to theirs was supported by the factual findings, including that the builders failed to advise residents of the actual minimum requirements of the subdivision's architectural standards or that the developer could change the standards at will, that there was a special relationship among the parties by virtue of the subdivision declaration, that the purchasers relied on the builders' representations when deciding to construct their homes on the lots, that their homes had a lesser value than they would have had if located amongst comparable homes, and that the purchasers' homes enhanced the developer's marketing of the remainder of the community as it was completed. [Yeager v. McManama](#), 874 N.E.2d 629 (Ind. Ct. App. 2007).
- 4 [Sunderhaus v. Perel & Lowenstein](#), 215 Tenn. 619, 388 S.W.2d 140 (1965); [Tetreault v. Campbell](#), 115 Vt. 369, 61 A.2d 591 (1948).
- 5 [Hiltbold v. Stern](#), 82 A.2d 123, 26 A.L.R.2d 852 (Mun. Ct. App. D.C. 1951); [Collier v. Nolan](#), 125 Vt. 82, 211 A.2d 265 (1965).
- 6 [Alio v. Saponaro](#), 133 A.D.2d 887, 520 N.Y.S.2d 245 (3d Dep't 1987); [Sunderhaus v. Perel & Lowenstein](#), 215 Tenn. 619, 388 S.W.2d 140 (1965).
- 7 [Samp v. Long](#), 50 S.D. 492, 210 N.W. 733 (1926).

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